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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRUCE HORTI, SANDRA GEORGE, and
JEANETTE CRAIG, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

NESTLE USA, INC., a Company,

Defendant.

Civil Action No.: 4:21-cv-09812-PJH

**STIPULATION AND ~~PROPOSED~~
ORDER GRANTING PLAINTIFFS
LEAVE TO FILE A SECOND AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

Judge Phyllis J. Hamilton

Complaint and First Amended Complaint
filed: December 20, 2021

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure and Rule 6-2 of the Local Rules of the United States for the Northern District of California, Plaintiffs Bruce Horti, Sandra George, and Jeanette Craig, individually and on behalf of all others similarly situated ("Plaintiffs") and Defendant Nestle USA, Inc., a Company, who will be dismissed from this action and Defendant Nestle Healthcare Nutrition, Inc., who will be the Defendant identified in the Second Amended Class Action Complaint, by and through their undersigned counsel, stipulate as follows:

WHEREAS, Plaintiffs filed both the Complaint and First Amended Class Action Complaint on December 20, 2021;

1 WHEREAS, leave to file a Second Amended Complaint will allow Plaintiffs to correct
2 the named Defendant to its correct entity name of NESTLE HEALTHCARE NUTRITION,
3 INC.;

4 WHEREAS, Defendant NESTLE HEALTHCARE NUTRITION, INC. consents to the
5 filing of the Second Amended Class Action Complaint;

6 WHEREAS, Plaintiffs and Defendant have conferred regarding a briefing schedule for
7 Defendant NESTLE HEALTHCARE NUTRITION, INC.'s response to the Second Amended
8 Class Action Complaint, as well as for the Opposition to and Reply in support of any Motion to
9 Dismiss the Second Amended Class Action Complaint, which will allow the parties sufficient
10 time to analyze and address the numerous claims anticipated in the Second Amended Class
11 Action Complaint;

12 WHEREAS, a Case Management Conference Statement is due April 7, 2022, and a
13 Case Management Conference is set for April 7, 2022;

14 WHEREAS, the filing of an Amended Complaint and the extension of time for
15 Defendant NESTLE HEALTHCARE NUTRITION, INC. to respond to the Second Amended
16 Class Action Complaint, as well as for the Opposition to and Reply in support of any Motion to
17 Dismiss the Second Amended Class Action Complaint, will cause a short delay of the Court's
18 Case Management Conference. The parties' briefing related to a potential Motion to Dismiss
19 will end approximately 20 days after the scheduled Case Management Conference. The parties
20 hereby request that the Court delay the Case Management Conference and Case Management
21 Statement due date until after the Court rules on the potential Motion to Dismiss.

22 THEREFORE, IT IS HEREBY AGREED AND STIPULATED THAT:

- 23 1. Plaintiffs shall file a Second Amended Class Action Complaint on **February 4, 2022**;
- 24 2. Defendant NESTLE HEALTHCARE NUTRITION, INC.'s deadline to respond to
25 Plaintiffs' Second Amended Class Action Complaint shall be **April 6, 2022**;
- 26 3. Plaintiffs shall file an Opposition to any Motion to Dismiss on **April 20, 2022**;
- 27

- 1 4. Defendant NESTLE HEALTHCARE NUTRITION, INC. shall file a Reply in
2 Support of any Motion to Dismiss on May 4, 2022; and
3 5. The parties request that the Court Stay the deadline of April 7, 2022 to file a Joint
4 Case Management Statement and the Initial Case Management Conference scheduled
5 for April 14, 2022 at 2:00 p.m. (Pacific) until after the Court rules on the Defendant
6 NESTLE HEALTHCARE NUTRITION, INC.'s Motion to Dismiss Second
7 Amended Class Action Complaint.

8
9 Dated: February 4, 2022

Respectfully Submitted,

10 **MILBERG COLEMAN BRYSON**
11 **PHILLIPS GROSSMAN, PLLC**

12 /s/ Alex R. Straus

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17 *Attorneys for the Plaintiffs*
18 *and the Proposed Class*
19 **Pro hac vice forthcoming*

20 Dated: February 4, 2022

21 Respectfully submitted,

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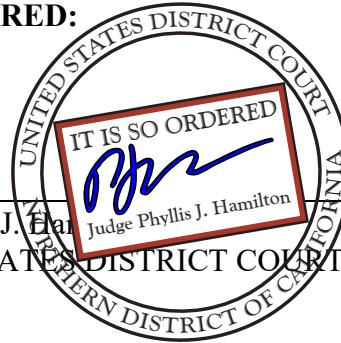
Attorneys for the Defendant

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: February 7, 2022

Hon. Phyllis J. Hamilton
UNITED STATES DISTRICT COURT JUDGE



ECF ATTESTATION

I, Alex R. Straus, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Timothy W. Loose has concurred in this filing.

Dated: February 4, 2022

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**

/s/ Alex R. Straus

Alex R. Straus, Esq. (SBN 321366)

***Attorneys for the Plaintiffs
and the Proposed Class***